

Appl. No. 10/802,156
Amtd. Date: February 6, 2007
Reply to Office Action of November 20, 2006

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REMARKS

The present application was originally filed with Claims 1-17. A restriction requirement has required election between Claims 1-7, drawn to the subcombination of a holder, Claims 8-14, drawn to a combination of a container, and Claims 15-17, drawn to a method of use. Applicants had earlier elected in a phone call with the Examiner to prosecute the invention of Claim 1-7, without traverse. That election is confirmed in this paper.

Accordingly, Claims 8-17 stand withdrawn from consideration. Claims 1-5 and 7 stand currently rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,645,186 to Powers et al. (hereafter "Powers"). Claims 1, 3 and 7 also stand rejected under 102(b) as anticipated by U.S. Patent No. 4,921,195 to Clark et al. (hereafter "Clark"). Claim 1 has been amended and Claim 2 has been cancelled, leaving only Claims 1 and 3-7 at issue.

Applicants traverse the 102(b) rejections and request reconsideration in light of the above amendments to Claim 1 and further in light of the arguments presented below.

Claim 1 Amendments

Claim 1 has been amended to clarify the distinguishing features of the invention over the cited references to Powers and Clark. Claim 1 is directed to:

A holder for a flexible bag comprising:

a sidewall defining a bag-receiving area and having an upper rim, a surface projecting from the sidewall, and a locking portion defining a recess, wherein the locking portion and the recess are disposed adjacent the upper rim on the surface, and

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a locking member having a bag-retaining notch therein and carried by the locking portion for movement between a release position and a locking position, wherein the notch is entirely within the recess, and below the surface, when in the locking position.

The term "frame" has been amended to a more suitable term which more clearly reflects the structural quality of the component, i.e., "sidewall". This is supported in the specification, with reference to the numbered paragraphs of the published application, at paragraph [0020], which states "the peripheral sidewall 11 forming a frame. . . ."

The claim has also been amended to add the limitation of the sidewall "having an upper rim, a surface projecting from the sidewall," The "upper rim" feature is supported by original Claim 2, now cancelled, while the "surface" limitation is described in at least paragraph [0023] of the specification. The added phrase "wherein the locking portion and the recess are disposed adjacent the upper rim on the surface," is well-supported by the many drawing figures of the present application.

With respect to the locking member, the limitation was merely re-worded to simplify the language. For example, the phrase "the locking member having a bag-retaining notch therein" was added after the introduction of the "locking member". The bag-retaining notch was also clarified by adding the limitation that such was "within the recess, and below the surface, when in the locking position." Again, this feature follows from the previous language, given the position of the related components, and is clearly illustrated in the several drawing figures, particularly Figures 2, 4 and 6.

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Claim 1, therefore, has been amended to clarify certain structural features of the invention and to more clearly distinguish these features over those of the cited art. No new matter has been added in the amending of the claim.

The Cited References: Powers and Clark

Powers is best described as a trash container 2 with bag clasps 20 attached to the outer sidewall surfaces 16, 17, 18 and 19 of the container. When a flexible trash bag is positioned within the container 2, it is folded over the rim of the container and grasped within the jaws of the clasps 20. The Powers design is simple and effective. However, as the Examiner notes:

... the clasp has two parts, first element 24 and second element 26, the second element defines a locking portion defining a recess adjacent to the fulcrum 40 as shown in Fig. 2 and 4, the first element defines a locking member carried by the locking portion for movement between a release position disposed out of the recess and a locking position disposed in the recess (the locking member includes parts like the fulcrum 38 positioned in the recess made by the fulcrum 40 of the locking portion and parts like the handle end 31 and jaw end 28 positioned out of the recess, the locking member having a bag retaining notch at the jaw end defined between any two teeth). [Emphasis added]

Clearly, as will be recognized by the Examiner, Powers does not disclose that the bag-retaining notch of the locking member "is entirely within the recess, and below the surface, when in the locking position" as required by independent Claim 1. Accordingly, independent Claim 1 distinguishes over Powers.

Clark is directed to a metal frame 49 used to support a plastic bag by retaining the bag within slots 72 using clamps 74. Here, the Examiner notes that Clark discloses:

... a locking portion with a recess (the downwardly facing recess in plastic connector (22, 22A)) and a locking member with a bag receiving notch (the upwardly facing notch in clamp (44, 44A)). Handle tab (locking bar (45, 45A)) is accessible.

However, Claim 1 of the present application requires "a sidewall defining a bag-receiving area." Clark discloses a metal frame, but no sidewall defining a bag-receiving area. Claim 1

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requires "an upper rim, a surface projecting from the sidewall, . . ." neither of which is disclosed in Clark. The top edges of the metal frame extend on only two of four possible sides, therefore they have no rim [Note: regardless of the definition used for the word "rim" it is universally accepted that a rim is continuous, though not necessarily limited to a circle]. As Clark has no sidewall, it is not possible that Clark could disclose a surface projection from such sidewall. Further, Claim 1 requires "wherein the locking portion and the recess are disposed adjacent the upper rim on the surface. . . ." of which are also not disclosed by Clark.

Accordingly, independent Claim 1 distinguishes over Clark.

In view of the amendments made to Claim 1 and the arguments set forth herein, it is clear that Powers and Clark fail to disclose several elements of the present invention as set forth in independent Claim 1. Accordingly, rejection of Claim 1 as anticipated by either cited reference, Powers or Clark, is without merit.

Further, it should also be clear that these references, whether considered alone or in combination, do not render the missing elements and, therefore, Claim 1 obvious. Applicants contend that Claim 1 is patentably distinct over these and all other cited references.

Additionally, as Claims 3-7 depend from, merely adding additional limitations to, Claim 1, these claims are also considered to distinguish over the cited art.

Reconsideration of the remaining claim is respectfully requested.

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CONCLUSION

The present application was originally filed with Claims 1-17. Applicants have elected to prosecute the invention of Claim 1-7, without traverse. That election is confirmed in this paper. Accordingly, Claims 8-17 stand withdrawn from consideration, while Claims 1-7 stand currently rejected under 35 U.S.C. 102(b) as anticipated by Powers and Clark. Claim 1 has been amended and Claim 2 has been cancelled, leaving only Claims 1 and 3-7 at issue. Applicants contend the above-amendments to Claim 1 distinguish over the cited references and respectfully request reconsideration of all pending claims.

Should any formality issues remain with respect to the claims or specification which can be handle by Examiner's amendment, the Examiner is requested to phone the undersigned attorney in an attempt to expedite the prosecution of the present application.

Respectfully submitted,

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